



IT IS ORDERED as set forth below:

Date: October 20, 2010

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

IN RE:)	
)	CASE NO. 10-60155-WLH
KAREEM J. DEWBERRY, SR.,)	
)	CHAPTER 13
Debtor.)	
_____)	
)	
KAREEN J. DEWBERRY, SR.)	
)	
Movant,)	
)	
v.)	CONTESTED MATTER
)	
BANK OF AMERICA, NATIONAL)	
ASSOCIATION AS SUCCESSOR BY MERGER)	
TO LASALLE BANK NATIONAL)	
ASSOCIATION, AS TRUSTEE FOR THE)	
CERTIFICATEHOLDERS OF BEAR STEARNS)	
ASSET BACKED SECURITIES I LLC, ASSET)	
BACKED CERTIFICATES, SERIES 2005-HEIO,)	
ITS SUCCESSORS AND/ OR ASSIGNS,)	
)	
Respondent.)	
_____)	

**ORDER DENYING MOVANT'S OBJECTION
TO PROOF OF CLAIM NO. 1**

The above-styled Objection [Docket No. 35] was set down for a hearing before this Court on September 8, 2010, at which time the Court ordered the Debtor to deposit with the Chapter 13 Trustee by September 10, 2010, the September mortgage payment of \$1,299.84 and ordered the Claimant to obtain an affidavit verifying Claimant was in possession of the original Note. On September 24, 2010, the Chapter 13 Trustee filed a Status Report Regarding Mortgage Payment [Docket No. 54], reporting that the Debtor did not deposit the September mortgage payment as required. A continued hearing on the Objection was held on October 6, 2010, upon notice of hearing to the above-referenced parties. Present were Maria Tsagaris, attorney for the Respondent, Steven Orr, attorney for the Movant, Kareem J. Dewberry, Sr., the Movant, and Melissa J. Davey, attorney for the Chapter 13 Trustee. Claimant produced the affidavit of Jeffrey D. Gill, now filed at Docket No. 56, and Debtor reported he had the September mortgage payment present in Court. Upon consideration of the record, including the Proof of Claim, the arguments of the parties, and the evidence offered at the hearing, the Court finds as follows:

1. The Debtor filed a bankruptcy case under chapter 13 of the United States Bankruptcy Code on January 4, 2010.
2. Bank of America as successor by merger to LaSalle Bank National Association, as Trustee for Certificateholders of Bear Stearns Asset Backed Securities I LLC, Asset Backed Certificates, Series 2005-HEIO, its Successors and/or Assigns ("BOA") filed Claim No. 1 ("Claim") on or about May 28, 2010. The name and address where notices were to be sent and where payments were to be sent were in care of EMC Mortgage Corporation ("EMC").
3. The Debtor filed an objection to the Claim on June 22, 2010, raising a number of objections:
 - a. The Claim was not supported by proper written documentation;

- b. There was no supporting documentation for the alleged arrearages;
- c. The Claim did not show a proper assignment of the Security Deed to BOA;
- d. The Claim did not include proof of a proper assignment of the Note to BOA; and
- e. The purported assignment of the Note and Security Deed violated 11 U.S.C. § 362(a)(4).

4. The Debtor did not dispute he executed a promissory note in the amount of \$114,000.00 to Pine State Mortgage Corporation on May 13, 2005 (“Note”), a copy of which was attached to the Claim.

5. The Debtor did not dispute he executed a Security Deed to MERS as nominee for Pine State Mortgage Corporation, also dated May 13, 2005 (“Security Deed”), which secured the Note. A copy of the Security Deed was attached to the Claim.

6. The Debtor scheduled “EMC Mortgage” as a creditor holding a first mortgage on the Debtor’s residence. The Debtor acknowledged having made pre- and post-petition mortgage payments to EMC. The Debtor had not received a conflicting notice to make payments to any other entity.

7. The Debtor acknowledged he was not current on his post-petition mortgage payments and did not deposit the September mortgage payment with the Chapter 13 Trustee as ordered by the Court because he did not have the money.

8. EMC as servicer for BOA is entitled to file the Claim. *See Greer v. O’Dell*, 305 F.3d 1297, 1302 (11th Cir. 2002).

9. The “Itemization of Claim” attached as Exhibit “A” to the Claim is sufficient to establish a *prima facie* claim. *See, e.g., Bareford v. Aafes/Mil Star/Exchange*, 2010 WL 3528604 (Bankr. S.D. Ga. 2010). The Debtor presented no evidence to contest any of the items identified in the Claim.

10. The Note was endorsed in blank by Pine State Mortgage Corporation, thereby making it payable to bearer. (O.C.G.A. § 11-3-205(b), § 11-1-201(5)). As such, it could be negotiated by transfer of possession alone (O.C.G.A. § 11-3-205(b)). The holder of such a note is entitled to enforce it (O.C.G.A. § 11-3-301). A “holder” is the person in possession if the instrument is payable to bearer. (O.C.G.A. § 11-1-201(20)). Moreover, under Georgia law, a transfer of a note which is not sufficient to make the transferee a “holder” can nevertheless constitute an assignment of the note. An assignee of the note can enforce it, but is not titled to the protection of the status of “holder” or “holder in due course” under the Uniform Commercial Code. *See Bank of Danielsville v. Seagraves*, 167 Ga.App. 135 (1983); *Tallahassee Bank & Trust Co. v. Raines*, 125 Ga.App. 263 (1972). EMC submitted the affidavit of Jeffrey D. Gill, stating under oath that it is in physical possession of the Note on behalf of BOA. Given that the Note was endorsed in blank, the Claim and the Affidavit of Jeffrey D. Gill provide *prima facie* evidence that BOA has the right to make the claim on the Note. *See Salahat v. FDIC*, 298 Ga.App. 624 (2009). The Debtor submitted no evidence to the contrary.

11. Assignment of a security deed post-petition does not violate the Bankruptcy Code. Fed. R. Bankr. P. 3001(e) contemplates post-petition assignments and procedures to be followed if the post-petition assignment occurs after a proof of claim has been filed.

12. A copy of the Security Deed is attached to the Claim. The Security Deed grants to MERS as nominee for Lender and Lender’s successors and assigns a security interest in the

identified real estate to secure repayment of the Note. Georgia law requires that an assignment of a security deed be executed with the same formalities as required of original security deeds, that being executed by one witness and a notary public. (O.C.G.A. § 44-14-64(a)). The assignment of the Security Deed from MERS to BOA as trustee is attached to the Proof of Claim and reflects the signatures of one witness and a notary public. The assignment recites it is an assignment of the Security Deed together with all indebtedness secured thereby. Assignment of a security deed also transfers the debt secured thereby. (O.C.G.A. § 44-14-64(b)). While the assignment does not appear to have been recorded as of the time the Claim was filed, Georgia law does not require the assignment to be recorded until immediately prior to any foreclosure under the Security Deed. (O.C.G.A. § 44-14-162(b)). Therefore, the copy of the Security Deed, together with the copy of the assignment which appears to be properly executed, is sufficient to create a *prima facie* claim on behalf of BOA in this case.¹ The Debtor provided no evidence to contest the *prima facie* evidence.

It is hereby ORDERED AND ADJUDGED that the Movant's objection to the Respondent's claim is DENIED.

END OF DOCUMENT

¹ The finding by this Court that the Claim is *prima facie* evidence of the creditor's claim is not a finding as to whether the assignments are proper for all purposes, but only a finding that BOA has standing to assert this claim in this bankruptcy case.